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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Galloway

Application No.: 10/020,759

Filed: 12/13/2001

Title: Improved Methods for Enhancing Broadcast Media Advertising

Attorney Docket No.: 50046

Art Unit: 3622

Examiner: Boveja

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

(i) Real party in interest.

The real party in interest is Richard L. Galloway

(ii) Related appeals and interferences.

The parent application, Serial No. 09/947,730, is under appeal. Applicant filed an appeal brief on 8/24/06. No answer has been received to date.

(iii) Status of claims

Claims 1-17, 19-27 and 29-30 are pending. Claims 18 and 28 have been cancelled. All pending claims are rejected. All pending claims are appealed. The independent claims are 1, 7 and 21 (method) and claim 13 (system.)

(iv) Status of amendments

All amendments have been entered.

(v) Summary of claimed subject matter

Background

In the broadcast media world (radio, TV, cable, satellite, such as Time Warner South Texas Region System) local ads are inserted into programming automatically by broadcast Inserter Equipment. (Spec page 7 lines 12-22; hereafter P7L12-22.)

Traffic and Billing System software produces logs (e.g. see Table 1A) that serve as input to the Inserter Equipment. The logs specify which local ad is to be played at what time by what media in what geographic area throughout a period; such as a 24-hour day beginning at midnight. The logs are created by algorithms balancing local ad time available versus the terms of the contracts entered into by the broadcast media's advertising clients. (P1L 20-26; P7L12-22.)

Prime time media advertising is frequently not purchased outright. Media ad contracts are structured so that it is significantly more expensive to purchase a time certain for an ad, say the 5PM

11/17/2006 09:12:03 00000003 10020759
01 FC:2402 250.00 0P

news spot for instance, than it is to buy a window of time for an ad to run, say sometime between noon and 10PM. (P1L15-19.) Hence, the latter contract is more prevalent. Time and billing system software use sophisticated algorithms to allocate local ad time during a day in accordance with contract terms and a variety of factors. (P1L 20-26)

See “Example” on P13L1 – P 14L11 for a description of how the broadcast insertion system works, in general.

The instant inventor, while an operations and traffic manager for Time Warner, Southern Texas Region, appreciated that the uncertainty inherent in media advertising contracts was disconcerting and off-putting to advertisers. He envisioned, as a consequence, that a timely report of exactly when one’s ads were actually run would be a valuable tool to woo advertising clients, and would be a valuable marketing tool for a broadcaster, and would give a broadcaster a competitive advantage. The availability of such a report could significantly enhance customer satisfaction. (P1L 26- P2L2; P7L6-7.) Further inventive insight suggested that such an automated report could novelly include a correlation with actual Nielson exposure data for the program associated with the ad, further comprising a valuable product for soliciting advertising clients. (P3L12-28.)

Prior Art - Limited Manual System

To the inventor’s best knowledge, manual ad reports had been attempted in the past, to a limited extent, for significant ad clients. The manual report was possible if, and only if, the licensed traffic and billing system provided for a manual request to “download” some relevant “report.” Preparing a report for the client then entailed manually (visually) identifying the relevant information, manually coping the data to a client report form and manually faxing the report. (P2L9-20; Fig 1A.)

The Invention

The instant invention automates the distribution of timely advertising reports. To accomplish this, the inventor not only creates an automated report distribution system but solves the problem of “accessing” records, or Logs, intended only to comprise communication between a Traffic and Billing System and broadcaster Insertion Equipment. A Verified File Log or the like, and preferably also a daily Schedule Log or Insertion Log or Event Log or the like, are “accessed” in the instant invention in order to automatically generate a report. (P13L7-26; P14L9-11.) Such “accessing,” as argued below, implies “recognizing and reading” information therein (P5L2), “copying” and “parsing” the data (P11L3-5.) The Logs represent the output of broadcast Insertion Equipment to Traffic to Billing Software and the output of Traffic and Billing Software to the Insertion Equipment. The instant invention includes the further enhancement of accessing a rating report, such as Nielson Ratings, and providing in addition an indicia of exposure, associated with the programs with which an ad was run, to

the advertising client. (P4L14-P5L15.)

One key to the invention is the capability to safely “access” these “records,” e.g. a Verified File Log (or the like,) and preferably also a daily Schedule Log. These logs are not produced by for the purpose of being “accessed.” They are produced as communication between, as input between, the inserter system and the billing system. (P12L7-26; P14:8-11.) Another key is automating a report distribution system.

Map-Independent Claims – To Specification and Drawings

1. (Original) A method for communicating a timing of ad broadcasts, comprising:
PIL 7-14; Fig 1B.

electronically accessing (Fig 2B, 3B) at least one electronically stored record indicating, directly or indirectly, at least times for ads broadcast in a past period (Table 1B);

automatically generating (Fig 2B, 3B) a client report (Table 3C, 3D) including at least a time for a broadcast of an ad in a period; and

automatically transmitting (Fig 2B, 3B) the report to an advertising client.

See P14L25-P15L10. [Note: on P14 L26 and 27, “Table 3D” should be “Table 1B”]

See also P4L3-13 re meaning of claim terms.

7. (Previously Presented) A method for assessing broadcast advertising, comprising:
PIL7-14; Fig. 1B.

electronically accessing (Fig 2B, 3B) at least one verified file log (Table 1B);

automatically compiling (Fig 2B, 3B) a verified broadcast report according to advertising client (Table 3C, 3D); and

automatically transmitting (Fig 2B, 3B) the report to a client.

See P14L25-P15L10. [Note: on P14 L26 and 27, “Table 3D” should be “Table 1B”]

See also P4L3-13 re meaning of claim terms.

13. (Previously Presented) A system for assessing broadcast advertising, comprising:
PIL7-14; Fig 1B.

means for electronically accessing (Fig 2B, 3B) a broadcast verified file; (Table 1B)

means, in communication with the verified file (Table 1B), for automatically compiling (Fig 2B, 3B) an “as-run” report according to advertising client (Table 3C, 3D); and

means, in communication with the client report, for automatically transmitting (Fig 2B, 3B) the report to a client.

See P14L25-P15L10. [Note: on P14 L26 and 27, “Table 3D” should be “Table 1B”]

See also P4L3-13 re meaning of claim terms.

21. (Previously Presented) A method for communicating ad broadcast effectiveness, comprising:

P1L7-14; Fig 1B.

electronically accessing (Fig 2B, 3B) at least one verified file (Table 1B),

electronically accessing a rating data file (Fig 3B); and

compiling a run report by ad client (Table 3D) containing indicia of actual ad exposure (Fig 3B).

See P14L25-P15L10. [Note: on P14 L26 and 27, "Table 3D" should be "Table 1B"]

See also P4L3-13 re meaning of claim terms.

Independently argued Dependent Claims

2. (Original) The method of claim 1 including accessing an electronically stored **record generated at least in part by broadcast inserter equipment** (Table 1B) and accessing an electronically stored **record generated at least in part by a traffic and billing system**. (Table 1A; Table 2)

P7L16-25; P8L20-P9L2; P14L25-P14L2 Note: "Table 3D" should be "Table 1B."

3. (Original) The method of claim 1 that includes automatically **generating and transmitting a plurality of reports**. Fig. 2B, 3B. P16L7-10.

8. (Currently Amended) The method of claim 7, including electronically **accessing at least one Schedule Log**. (Table 1A; Table 2)

P7L16-25; P8L20-P9L2.

12. (Previously Presented) The method of claim 7 that includes automatically **compiling and transmitting a plurality of reports to a plurality of clients**.

Fig 2B, 3B. P16L7-10.

14. (Original) The system of claim 13 including

means for electronically accessing a **Schedule Log file** (Table 1A; Table 2), in communication with the means for compiling.

P7L15-25; P8L20-P9L20.

22. (Currently Amended) The method of claim 21 including electronically accessing a **Schedule Log file**. (Table A; Table 2)

P7L16-25; P8L20-P9L2.

25. (Previously Presented) The method of claim 1 including electronically accessing a **rating data file** and transmitting an **indicia of actual ad exposure**.

Fig 3B, Table 3D; P15-L3-7.

26. (Original) The method of claim 25 wherein the indicia include a relevant **Nielson Rating**. Table 3D; P15L3-7.

27. (Currently Amended) The method of claim 7 including electronically **accessing a rating data file and transmitting an indicia of actual ad exposure**.

Fig 3B, Table 3D; P15L3-7.

The above map of claims to specification and drawings does not purport to be exhaustive. The various limitations are discussed, in a variety of circumstances, directly or indirectly, throughout the Written Description.

Step Plus Function Claims

Independent claim 13, and dependent claim 14 argued separately, contain means plus function limitations.

Claim 13

The structure for a Verified File Log is illustrated in Table 1B. The structure corresponding to means for electronically accessing a broadcast verified file is illustrated in Figure 3B, upper left. See P14L25-P15L2; P15L8-12; P15L13-27. [Note: Table 3D should be Table 1B.]

An As-Run report according to advertising client is illustrated in Table 3C and Table 3D. The structure corresponding to the means in communication with the Verified File for automatically compiling the As-Run Report is illustrated in the upper left hand side of Figure 3B under the accessing means. See P10L1-4.

The structure corresponding the means, in communication with the client report, for automatically transmitting the report to the client is illustrated in Figures 3A and 3B bottom half. See P15L4-6; P9L18-27.

Claim 14

Structure corresponding to the means for electronically accessing a Schedule Log File is illustrated in the upper right hand side of Figure 3B. A schedule log file is illustrated in Table 1A and Table 2. See P13 L7-26; P16L1-2; P7L19-27.

(vi) Grounds of rejection to be reviewed on appeal

I. Whether claims 1-30 are obvious over admitted art in view of Rogers '451.

Important Identifiable Sub-Issues

A. In light of the specification, the proper meaning of the term “accessing,” as contrasted with the term “downloading” as used in regard to the prior art.

B. In light of the specification, the proper meaning of the phrase “an electronically stored record indicating, directly or indirectly, at least times for ads broadcast in a past period,” as

contrasted with the term “databases,” made available through “gateways” to “web servers,” as used by Rogers.

C. The particular problem with which the inventor was concerned, and who is the “skilled artisan” (person of ordinary skill in the pertinent art.)

D. Viability of per se invalidity rules, referencing *In re Venner*, and per se absence of patentable weight rules, referencing *Ex parte Pfeiffer*.

(vi) Argument

Sub Issues

Resolution of the following sub-issues is implicated repeatedly in applicant’s traversal. Thus, they will be discussed first and then subsequently referenced.

A. In light of the specification, what is the proper meaning of the term “accessing” used in the claims, in contrast with the term “downloading” used in regard to the prior art.

Applicant uses the word “access” in the instant claims, in contrast with and to the word “download” which was used to describe a prior art manual process. Applicant submits that, in light of the specification, the words have different meanings and were intended to have different meanings.

Review of dictionary definitions shows that to download is to transfer, as from one computer memory to another. The Examiner agrees that to download means to transfer from a host to a computer or a device; see page 14 of the Action made final.

To “access,” by contrast, in dictionary definitions, is to exercise a liberty or a permission or an ability to enter, to approach, to communicate with, to pass to and from. To “access” is to “enter and to use.” See American Heritage Dictionary the English Language, for instance.

To “access” a file entails an ability to interpret, to extract information, to “parse data” (P9L22) to “recognize and read” (P5L2,) to “copy and cull data” (P1L26-27.)

On page 8 and page 12 of the Action made Final the Examiner even appears to agree that “accessing” “logically includes identifying.”

Whereas the prior art could (at times) “download” a “report” from a traffic and billing system, as by printing it, it could not automatically produce its own reports, nor could it automatically distribute reports. The instant invention “accesses” an inserter system record and/or a traffic and billing system record (a Verified Run File, a Scheduled Log) directly to parse and cull, to recognize and to read, automatically electronically, and then to automatically distribute a result.

B. In light of the specification, what is the fair reasonable meaning of the phrase “an electronically stored record indicating, directly or indirectly, at least times for ads

broadcast in a past period,” as contrasted with the Examiner’s “database record” made available through “gateways” to “web servers,” as taught by Rogers.

The Examiner asserts that accessing “an electronically stored record indicating, directly or indirectly, at least times for ads broadcast” (claim words) “boils down to” (Examiner’s words) accessing “a database record.” See page 8 of Action. Applicant traverses.

The Examiner basically takes the position that the phrase “indicating, directly or indirectly, at least times for ads broadcast in the past,” as a qualifier of “record,” receives no patentable weight. The reason expressed is that the “times” phrase in the claims represents “non-functional descriptive material.” Equally, in claim 2, referring to the record by the phrases generated “at least in part by broadcast inserter equipment” and/or “generated at least in part by traffic and billing systems” is to receive no patentable weight, according to the Examiner. The reason given that is “the name of the system does not impact the method step.” Cite is to Ex parte Pfeiffer.

Applicant submits, to the contrary, that the qualifying phrases “indicating, directly or indirectly, at least times for ads broadcast in the past” and/or “generated at least in part by broadcast insertion equipment” and/or “generated at least in part by a traffic and billing system” should receive proper patentable weight. The phrases qualify what kind of record is under consideration, by referring to their content or by referring to their source. (Applicant also refers to the records in some of the claims by their trade names.) The “kind” of record affects a record’s ability to be accessed and manipulated. Applicant argues below that there is no per se lack of patentable weight rule, based on Ex parte Pfeiffer, in regard to method steps.

The skilled artisan knows that “Log records” (Verified File Log and Schedule Log) referenced by applicant are created by broadcast Insertion Equipment for input to Traffic and Billing System software, or vice versa, for operations. The Examiner produces no evidence that these records are “databases” managed by “gateways” to be made accessible to “web servers,” as is the subject matter of reference Rogers.

(Reference to Encyclopedia Britannica shows that “gateways” are structured, in conjunction with “web servers” and “databases,” to make databases accessible to the web servers. E.g.:

“In a wide-area information service, a number of which began operating at the beginning of the 1990s on the Internet computer network, a user’s personal computer or terminal (called a client) can search simultaneously a number of databases maintained on heterogeneous computers (called servers.) The latter are located at different geographic sites, and their databases contain different data types and often use incompatible data formats. **The simultaneous, distributed search is possible because clients and servers agree on a**

standard document addressing scheme and adopt a common communications protocol that accommodates all the data types and formats used by the servers. Communication with other wide-area services using different protocols is accomplished by routing through so-called gateways capable of protocol translation. ... They have access to data on the servers sharing a common protocol as well as to data provided by services that require protocol conversion via the gateways. Copyright © 1994-2002 *Encyclopedia Britannica, Inc.* "Information Processing, Elements of information processing, Organizational and retrieval of information, Query languages"

The Examiner produces no evidence of any such "gateway" functionality in regard to the records produced by broadcast Inserter Equipment or Traffic and Billing Systems.)

The type of "record" is important, both to applicant and to reference Rogers. In the context of the specification, "an electronically stored record indicating, directly or indirectly, at least times for ads broadcast in a past period," or "a verified file log," or a "broadcast verified file" do not "boil-down" to a "database record," as per Rogers.

C. What is the particular problem with which the inventor was concerned and who is the "skilled artisan" (person of ordinary skill in the pertinent art.)

The particular problem with which the inventor was concerned was providing a method and system for timely advising broadcast media advertising clients of the timing of, and the circumstances associated with, the running of their ads.

A person of ordinary skill in the pertinent art is a person in the position of Operations Manager or director or manager of Ad Sales Technical Operations and/or a Control Supervisor for broadcast media. (Time Warner is an example of a broadcast media.) This person would likely have a bachelor's degree or an equivalent in work experience. The bachelor's degree could be in business, communications, engineering or computer science. There is no requirement know programming nor need for programming skill in the job.

An operations manager oversees day to day operation of the insertion process for local ads into broadcast programming via a media's insertion equipment and licensed software, taking into account the multiplicity of channels and geographic divisions and frequent changes of, or additions to, software and hardware systems. The broadcast media makes its revenue selling local ads via complex contracts. The operations manager oversees that advertising contract terms are entered into the software properly and that inserter equipment interrupts the programming to insert the ads in the proper channel.

Operations managers may know that individual next day ad schedule report could be manually produced and faxed to a limited number of ad clients if the traffic and billing software system produced

a relevant report, upon manual request. An operations manager is not expected to know whether reports could be automated and/or automatically distributed.

Factors

(1) Educational Level of the Inventor

The instant inventor has a one and one half year associate degree from United Electronics Institute, a technical school, covering radio, TV and computer repair and installing. No programming was covered in his education.

(2) Type of Problems Encountered in the Art

The types of problems encountered in the pertinent art include the insertion of local ads in the programming of a multiplicity of stations and channels and geographic areas as per a multiplicity of disparate advertising contracts.

(3) Prior Art Solutions to These Problems

Prior art solutions to the problem of advising advertising clients of when their ads ran run consisted of limited manual solutions. Manual solutions quickly ran into limits as to feasibility in terms of time and money. Enhanced information was not considered.

(4) Rapidity with which Innovations are Made

The type and variety of broadcast media itself has rapidly expanded, both in the number of stations and channels and in the capacity to geographically divide the type of media available. Automated traffic and billing software systems replaced manual scheduling systems in the 1980s. Approximately a dozen commercial automated traffic and billing software systems are available for license in the US. The variety and scope of the terms of media advertising contracts is extensive.

(5) Sophistication of the Technology

Licensed traffic and billing software is sophisticated. Inserter hardware and software is sophisticated. Broadcast operations, which purchase, lease or license such systems and run the systems, are not highly technically sophisticated.

(6) Educational Level of Active Workers in the Field

In the field of operations managers for broadcast media, the educational level is usually bachelor's degree or equivalent work experience. The bachelor's degree can be in business, communications, computer science or engineering.

Applicant traverses the Examiner's position that one of ordinary skill in the art would be, in general, "one skilled in computer software and hardware and familiar with the known systems," to the extent such implies knowledge of or skill in programming, or in creating or repairing or modifying the systems. Broadcast media purchase or lease their hardware and license their software. A broadcast

media operations manager does not develop or repair such systems. The operations manager does not program and is not asked to supervise programming.

D. Viability of per se invalidity or lack of patentable weight rules, referencing *In re Venner* and *Ex parte Pfeiffer*.

Re Ex parte Pfeiffer In regard to the Examiner's reliance on *Ex parte Pfeiffer* 135 USPQ 31 (BdPatApp&Int 1961) for the proposition that:

“To be entitled to such weight in method claims, the recited structural limitations therein must affect the method in a manipulative sense and not amount to the mere claiming of a use for particular structure.”

Applicant traverses, as a matter of law.

Applicant submits that any such apparent holding of *Ex parte Pfeiffer* has been effectively overruled by the Federal Circuit in *re Ochiai*. In reversing in *Ochiai*, the Federal Circuit held that the Board erred where it failed to consider the differences between the claimed invention with all of its limitations and the prior art references. The argument that process claims are unobvious when they include unobvious product limitations was validated by the Federal Circuit in *In re Ochiai*. The holding in *In re Ochiai* was that all claimed product limitations in process claims must be given patentable weight and cannot be disregarded. See 71 F.3d at 1569. The rationale of in re Ochiai that all claimed process limitations have to be given patentable weight has been followed in *In re Brouwer*. According to the Official Gazette, the Federal Circuit's contribution to the existing body of case law in *In re Ochiai* is a requirement that all product limitations in process claims should be given patentable weight during obviousness determinations. 1184 Official Gazette Patent Office 86, March 26, 1996. Section 2116.01 of the 1996 addition of the MPEP restates the Official Gazette notice that all claim limitations must be considered in a process or method claim. (Section 2117 of the 1995 MPEP addition, issued prior to *in re Ochiai*, was deleted in the 1996 version. Section 2117 directed that structural elements recited in the claim must manipulatively distinguish the claim from prior art to have patentable weight.)

Accord 2006 WL 3146976 (Bd. Pat. App. & Interf.) Ex parte Arvidson et al.

No Per Se Rule Re “Automation”

Applicant traverses the Examiner's assertion of a “per se rule” that providing an automatic means to replace a manual activity is per se insufficient to distinguish over the prior art (relying on *In re Venner*.) *In re Venner* does not support a per se rule on “automation.” When in *Ex parte Richard Brouillet*, April 12, 2001, 2001 WL 1339914, the Examiner relied on *In re Venner* to argue, “[i]t has been held that broadly providing mechanical or automatic means to replace manual activity which has

accomplished the same result involved only routine skill in the art,” the Board reversed. The Board pointed out that the Federal Circuit held in *In Re Ochiai*, (Fed Cir 1995) that “relying on per se rules of obviousness is legally incorrect and must cease.” The Board noted in *Brouillet* that the “holding” in *Venner* stood not because of any per se rule, as asserted by the Examiner in *Brouillet*, but because the Examiner in *Venner* had in fact provided references which disclosed all limitations.

Applicant also traverses, as a matter of fact, the Examiner’s associated assertion that applicant’s “automation” gives you just what you would expect. There are synergistic results from applicant’s automation, results greater than what was possible with manual production. Automating the process creates timely, cost effective, mass distributable reports, for all advertising clients, and formatting can be tailored to the needs of the media. See attached letters. Applicant traverses the Examiner’s position that “[t]he end result is the same as compared to the manual method.” The automated product enables a mass distribution with serendipitous synergistic results. E.g., communication provided by the product can incite competition to upgrade advertiser contracts. Directly “accessing” the “record,” the Log, can yield more useable information than dependence upon what a system chooses to “report.” Further, automated reports can be enhanced with rating data, indicia of exposure.

Traversal

Rogers Comprises Non-Analogous Art Rogers is one of a series of IBM patents relating to improvements in World Wide Web server/browser intercommunication. Rogers lies in the field of more efficient browsing of the World Wide Web. Applicant traverses the Examiner’s position that Rogers comprises analogous art. Rogers’ “Method for Filling Requests of a Web Browser” is not in the same field as applicant’s “Method for Enhancing Broadcast Media Advertising,” as that field is disclosed in the second paragraph of page 1 of the instant Written Description. E.g.:

“The invention relates to methods and apparatus for enhancing the value of media advertising and for review of the advertising, and more particularly to methods and apparatus for advising advertising clients about the scheduling of their ads prior to broadcast; for facilitating the review of ad schedules by account representatives; for checking for errors or omissions in a traffic and billing system or the like, such as inadvertent media deletion; and for assessing the accuracy of media insertion technique and/or for assessing advertising exposure as a result of a broadcast media insertion of ads based on a Schedule Log/Inserter Log or the like.”

Use of web server/browser improvements and/or utilizing existing equipment advantageously for web server data access is not within the pertinent art and is not within the instant inventor's field of endeavor.

Rogers is not pertinent to the problem applicant is addressing. Rogers does not address providing an automated report distribution system, much less a report comprising timely information for broadcasting to media advertising clients as to the timing of, and circumstances associated with, the running of their ads. The Examiner cites no automated report distribution system in Rogers.

As Best Understood Rogers Provides no Pertinent Teaching

Rogers is not reasonably pertinent to the particular problems with which the inventor was involved, as those problems are discussed above. The Examiner cites Rogers for disclosing "electronically grabbing information from multiple sources." This broad statement comprises a significant over-simplification of what is claimed in the instant invention. Rogers does not teach that or how to reach into and retrieve data from any system whatsoever. Rogers' sources are sources for which the browser in question is concomitantly pre structured to "browse." More particularly, Rogers' does not teach or disclose means for, or the possibility of, "electronically grabbing records" from traffic and billing system software, a system whose output is designed to be used for the real-time control of broadcast media insertion equipment. It is far from clear that, or how, such record would be available to be "electronically accessed." There is no evidence that Rogers discloses any technology that would have been known to be capable of performing the instant automated steps. The discussion, below and attached as to the failure of one programmer, within budgeted time, to duplicate the instant invention attests to the fact that effecting the instant inventor's solution is not trivial, even for a programmer.

To Summarize Re Rogers

Rogers does not comprise analogous art. Rogers is not in the field of applicant's invention. Rogers is not reasonably pertinent to the particular problem with which the invention is involved. The instant invention is involved with electronically accessing records of traffic and billing system software or the like and the automation of pertinent client-oriented scheduled advertiser reports. Rogers did not teach that such electronic accessing was possible nor that applicant's automation was desirable nor how to effect the automation. Rogers contains no teachings relating to traffic and billing system software and the accessibility of its records.

Applicant further submits that Rogers does not show evidence of the level of the skill in the pertinent art. There is no indication that Rogers dealt with, contemplated or had any advice to give in regard to the records produced by a traffic and billing system and their use.

Applicant respectfully traverses the assertion that Rogers teaches automation in the context of the prior manual processes.

Specific Traversal of Claims

There are three significant differences between the instant invention and the Examiner's references, the admitted prior art and Rogers. The differences are: (1) an automatic system vs a manual system; (2) electronically "accessing" "Log records" (shorthand for record indicating ad broadcast times) vs manually "downloading" a report or vs accessing a "database" by a "web server" through a "gateway; "and (3) the combination of a report with correlated exposure indicia (Nielson ratings.) The Examiner appears to acknowledge the first and third difference, although not the second.

(1) "Automatic Report Distributing System."

Re Claims 1, 7, 13, 21, and those that depend thereon.

The Examiner admits that the admitted manual prior art did not disclose an automated advertiser report distribution system, as per all independent claims. The Examiner argues, however, 1) that automating a manual system is per se obvious, relying on *In re Venner*. Applicant responds that there is no per se obviousness rule re automation as per *In re Venner*. Applicant's position is discussed above. Applicant further submits, as discussed above, that in fact, the results of automation are not the same.

The Examiner appears to argue 2) that Rogers supplies this deficiency, that Rogers teaches an automated report system. Applicant traverses that Rogers discloses an automated report distribution system. The Examiner does not produce any evidence of an automated report distribution system in Rogers. Rogers discloses, in circumstances which do not pertain here, an improved automated accessing of "databases" through "gateways" by "web servers." Such is not the same thing.

Re claims 3 and 12 specifying multiple distributees.

Claims 3 and 13 specify automatically generating and transmitting a plurality of reports, or automatically compiling and transmitting a plurality of reports to a plurality of clients. Such limitations distinguish the instant claims even further from the teachings of Rogers, who does not teach an automated report distribution system.

The manual prior art system was strained by attempting to generate and transmit a plurality of reports to a plurality of clients. Rogers does not remedy this deficiency. The instant claiming that the reports are generated and transmitted to a plurality of clients further distinguishes the claims from the cited art.

(2) "Electronically accessing a 'Log record.'" ('Log record' is shorthand for a record indicating times for ads broadcast.)

Re claims 1, 7, 13, 21 and those that depend thereon.

As a separate difference not particularly acknowledged by the Examiner, the admitted prior art did not disclose “electronically accessing” a “Log record.”

As discussed above, electronically accessing a “Log record,” in the instant context, is not the same as “downloading” a report. Further, electronically accessing a “Log record” is not the same as electronically accessing a “database” maintained by a “gateway” for access by “web servers,” as per Rogers.

In arguing that applicant’s limitation is taught by Rogers, the Examiner refuses to accord patentable weight to applicant’s qualifier that distinguishes what kind of “record” applicant is claiming is accessed. This is discussed above. The Examiner without justification ascribes to applicant’s “record” Rogers’ type of record (e.g. a “database” maintained by a “gateway for “web servers.”) Such refusal to accord patentable weight, as well as such arbitrary reclassification, applicant submits, is improper. Applicant’s distinction is important. Not all “records” are the same. The Examiner arbitrarily asserts that applicant’s “Log record” (as claimed functionally by what it contains) “boils down” to a “database record.” This is incorrect. The Examiner provides no evidence as to why this should be so. “Database records,” especially database records maintained by “gateways” for access by “web servers,” are specialized records. Please see discussion above.

In sum, applicant’s claimed “record” does not “boil down” to a “database record.” Rogers teaches accessing a variety of “databases” maintained by “gateways,” the gateways maintaining the variety of databases for the purpose of being accessed by a variety of “web servers.” See discussion above. There is no evidence that applicant’s “Log record” qualifies as any such database. Applicant’s record is specifically produced as input to another system. Rogers is not applicable to the instant invention. Rogers does not disclose “electronically accessing applicant’s ‘Log record’.”

Re claims 8, 14, and 22.

Claims 8, 14 and 22 further qualify the records accessed. Claim 8, 14 and 22 recite electronically accessing at least one Schedule Log. A Schedule Log indicates, directly or indirectly, times for ads to be broadcast in a future period. Claims 8, 14 and 22, thus, are even further from the teachings of Rogers.

(2) The combination of an advertising report with indicia of ad exposure or Nielson ratings.

Re claims 25, 26 and 27.

The Examiner produces no evidence of a teaching or suggesting or motivation to correlate an indicia of ad exposure, or a Nielson rating, with a automated report to an advertiser, reporting when and where an ad was run and giving exposure data relating to the ad. The only motivation provided is the

motivation of the instant application. The Examiner points to no other suggestion in the art or general knowledge for providing such combination of information and exposure data in an advertiser report.

Motivation to Combine

Notwithstanding *In re Venner* and notwithstanding Rogers, applicant submits that the Examiner impermissibly derives any motivation to modify the admitted prior art from the disclosure of the instant application itself. There is no evidence that broadcast media appreciated the usefulness of the instant invention at the time the invention was made. "There can of course arise situations wherein identification of the problem is itself the invention." *Cardiac Pacemakers, Inc v. St. Jude Medical, Inc.* 381 F.3d 1371, 1377 (Fed. Cir. 2004)

There is no evidence that at the time of the invention broadcast media were dissatisfied with the prior art system. There is no evidence that broadcast media were dissatisfied with either distributing no advertising client reports or manually distributing a limited number of manually produced advertising client reports.

It is the inventor's experience that broadcast media did not, in fact, appreciate the usefulness of automated advertising client reports at the time the invention was made. Broadcast media did not then appear to see any problem with current practice and did not then appear to consider any solution needed. The foregoing is illustrated by the fact that the instant inventor's employer, Time Warner Southern Texas Region, would not fund the cost or expenses for developing the instant product. The instant inventor, as a result, had to develop the product on his own time and at his own expense. The employer, Time Warner Texas Southern Region, further permitted the inventor to test his prototype program in the Southern Texas Region facilities but did not remunerate the instant inventor for the process.

The Examiner points to no indication of an appreciation of the problem in the prior art. There is an absence of evidence of motivation to modify the prior art.

Secondary Evidence of Non-obviousness

Evidence of Commercial Success

(Submitted in Response filed 1/9/6) Repeated here for convenience. See also Evidence Appendix

A prototype of the program was beta tested at the inventor's employer from roughly 1996 through 2000. Satisfactory results were eventually produced for a test group. Advertising clients involved in the testing came to expect the service, and then demand the service. Some of these advertising clients attempted to put the transmission of the reports into their contract. A technical school became dependent upon the reports to the extent that they scheduled phone banks according to

when their spots were scheduled to air. After the program began to be offered commercially in 2001, the number of advertisers receiving their times per day rose to several 100. The attached letters attest to the commercial success of the invention.

Copying and Failure of Others

The original prototype program began testing at the Time Warner Southwest Region around 1996. In 1997 Time Warner changed traffic and billing systems. This required an enlargement of the prototype program. The Time Warner local IT department at this time asserted that they did not want a program written by a non-IT person to run on their network. The manager of the IT department hired a programmer to recreate the prototype. The instant inventor fully cooperated with the programmer on the features of the program. However, the record shows, at least in this instance, that when the switchover in traffic and billing systems was implemented, the programmer had been unable to create a working program. The instant inventor rewrote the protocol, and Time Warner beta tested his new program. Such is evidence that producing a successful system is not simplistic. Upon information and belief at this time at least one competitor is beta testing a program that copies the instant invention.

Respectfully Submitted,



Sue Z. Shaper
Attorney/Agent for Applicant(s)
Reg. No. 31663

11/16/16

Date

Sue Z. Shaper
1800 West Loop South, Suite 1450
Houston, Texas 77027
Tel. 713 550 5710

(viii) CLAIMS APPENDIX

WHAT IS CLAIMED IS:

1. (Original) A method for communicating a timing of ad broadcasts, comprising:
 - electronically accessing at least one electronically stored record indicating, directly or indirectly, at least times for ads broadcast in a past period;
 - automatically generating a client report including at least a time for a broadcast of an ad in a period; and
 - automatically transmitting the report to an advertising client.
2. (Original) The method of claim 1 including accessing an electronically stored record generated at least in part by broadcast inserter equipment and accessing an electronically stored record generated at least in part by a traffic and billing system.
3. (Original) The method of claim 1 that includes automatically generating and transmitting a plurality of reports.
4. (Original) The method of claim 1 wherein transmitting is at least by one of fax and email.
5. (Original) The method of claim 1 wherein transmitting includes a banner.
6. (Original) The method of claim 1 that includes automatically transmitting report information to an account manager for the client.
7. (Previously Presented) A method for assessing broadcast advertising, comprising:
 - electronically accessing at least one verified file log;
 - automatically compiling a verified broadcast report according to advertising client; and
 - automatically transmitting the report to a client.
8. (Previously Presented) The method of claim 7, including electronically accessing at least one Schedule Log.
9. (Previously Presented) The method of claim 8 including:
 - outputting a measure of the effectiveness of a broadcast media in executing advertising in accordance with a Schedule Log.
10. (Previously Presented) The method of claim 9 that includes outputting a measure of effectiveness according to advertising client and automatically transmitting the measure to the client.
11. (Previously Presented) The method of claim 10 that includes outputting an indicia of an omitted ad.
12. (Previously Presented) The method of claim 7 that includes automatically compiling and transmitting a plurality of reports to a plurality of clients.

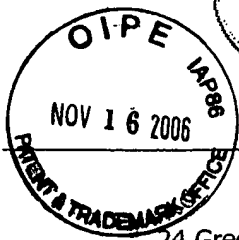
13. (Previously Presented) A system for assessing broadcast advertising, comprising:
- means for electronically accessing a broadcast verified file;
 - means, in communication with the verified file, for automatically compiling an “as-run” report [[by]] according to advertising client; and
 - means, in communication with the client report, for automatically transmitting the report to a client.
14. (Original) The system of claim 13 including
- means for electronically accessing a Schedule Log file, in communication with the means for compiling.
15. (Original) The system of claim 14 including means, in communication with the Schedule Log means and verified file means, for outputting a measure of the effectiveness of a broadcast media in executing advertising in accordance with a Schedule Log.
16. (Original) The system of claim 13 that includes means for automatically transmitting a plurality of reports to a plurality of clients.
17. (Original) The system of claim 14 including means for automatically transmitting a schedule report to a client prior to broadcast.
18. (Cancelled)
19. (Original) The method of claim 1 including generating a report including a title for an ad.
20. (Original) The system of claim 14 that includes means for identifying at least media, time, client and title information within records created by different traffic and billing systems.
21. (Previously Presented) A method for communicating ad broadcast effectiveness, comprising:
- electronically accessing at least one verified file;
 - electronically accessing a rating data file; and
 - compiling a run report by ad client containing indicia of actual ad exposure.
22. (Previously Presented) The method of claim 21 including electronically accessing a Schedule Log file.
23. (Previously Presented) The method of claim 21 including electronically transmitting the report to a client.
24. (Previously Presented) The method of claim 21 including electronically accessing a client file and automatically transmitting reports to a plurality of clients.
25. (Previously Presented) The method of claim 1 including electronically accessing a rating data file and transmitting an indicia of actual ad exposure.

26. (Original) The method of claim 25 wherein the indicia include a relevant Nielson Rating.
27. (Previously Presented) The method of claim 7 including electronically accessing a rating data file and transmitting an indicia of actual ad exposure.
28. (Cancelled)
29. (Previously Presented) The method of claims 1, 2 and 23 wherein the automatically transmitting includes posting on the Internet for client access.
30. (Previously Presented) The system of claim 13 wherein the means for automatically transmitting includes a client accessible Internet site.

(ix) EVIDENCE APPENDIX

Attachments to Applicant's Response filed 1/9/06.

Portions of Applicant's Response filed 1/9/6: pp11-12.



Radio One of Texas, LP – Houston

24 Greenway Plaza, Suite 900, Houston, TX 770046 Phone: (713) 623-2108 Fax: (713) 629-0012

October 14, 2005

TO WHOM IT MAY CONCERN:

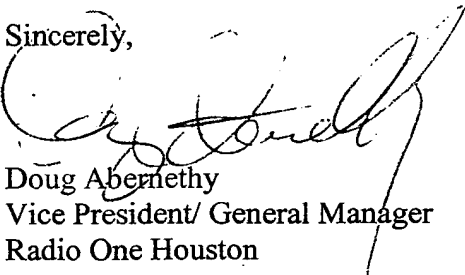
AirCheck has been a welcome addition to my sales organizations for the past three years. It is efficient, reliable and invisible, allowing our Traffic and Sales Assistants to focus on important, revenue related work instead of the mundane task of sending times to our advertisers.

AirCheck dependably, electronically or by fax, sends scheduled air times to selected clients and/or agencies, keeping our name in front of our customers – it even gives us the opportunity to add a daily promotional message touting our stations and sales specials.

Clients appreciate the reliability of having spot time information, and we feel this positively differentiates us from others in the market.

I would recommend AirCheck to any advertising sales organization, whether Radio, TV or Cable advertising.

Sincerely,



Doug Abernethy
Vice President/ General Manager
Radio One Houston



October 31, 2005

Lynne Galloway
Rick Galloway
Pickle Programs
4759 Whispering Falls
Houston, TX 77084-3137

Dear Lynne and Rick:

I would like to take this moment to thank you both for introducing the "Pickle Program" to our Houston market. This program has been a life savior not only to the sales assistants, but to the sales people. The program has allowed us to send out spot times to our clients the afternoon before it is scheduled to run. It also enables us to send out the times by fax and/or email to as many clients as we want, up to 10 different contracts, by entering the information in the system once. This includes the advertiser's name, contract number and flight date. I love this, because I can insert a start date and end date, and do not have to worry about that again until it expires.

Prior to using the "Pickles Program" which is what we like to call it, could take as long as 45 minutes to send out the daily times. Now, it takes just a couple of minutes and you are done. What I like best about this program is the email confirmation which is forwarded to my email address that list the advertisers' spot times so that I know exactly what they received.

It's hard to believe it has been nearly four years since your program was introduced to us. It has enable me to focus on projects that otherwise would have been given to someone else. In addition, I feel that I am more productive since this is a great example of "working smart" rather than "working hard".

Thanks for creating this software that has made it easier for me to do my job and be more productive in the workplace.

Sincerely,

Juliet Freddie
Sales Assistant
Cox Radio Houston (KLDE, KHPT, KKBQ, KTHT)
Phone: 713-561-8002; Fax: 713-622-5457

KHPT • KKBQ • KLDE • KTHT

1990 Post Oak Blvd.

Suite 2300

Houston, TX 77056

T: 713.961.0093

F: 713.993.9300



April 16, 2003

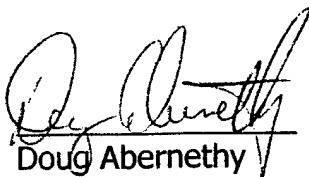
To who it may concern,

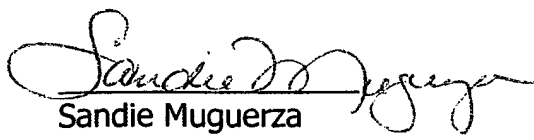
I would like to recommend a program that we have enjoyed for nearly a year now. The program sends out scheduled times by way of fax or email. The program is called AirCheck and is distributed by Pickle Programs.

Our sales assistants were burdened with the chore of pulling reports and faxing out the client's next day schedule. They no longer have to spend their valuable time in this manner. They are now able to enter each requesting clients information and the program does the rest!

Pickle Programs even modified the program to send out the times only after all four of my stations logs have been completed by the traffic department. We have received many favorable responses from clients who enjoyed the benefits of this program.

This program is valuable in keeping in contact with our advertisers and I recommend this program wholeheartedly. I will be happy to refer you to Pickle Programs or have them get in touch with you for more information on this timesaving program.


Doug Abernethy
Director of Sales


Sandie Muguerza
Sr. Sales Assistant



TIME WARNER

CABLE

Advertising Sales

1900 Blue Crest Lane
San Antonio, Texas 78247
Tel 210-352-4545 • Fax 210-352-4540



August 20, 2001

Mr. Rick Galloway, Vice President
Pickle Programs
4759 Whispering Falls
Houston, TX 77084-3137

Dear Rick:

As you know, Time Warner Cable Ad Sales—San Antonio has been using AirCheck to send daily times to our clients in 2001.

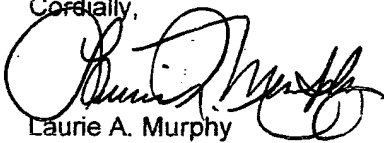
In addition to faxing or e-mailing times on a daily basis, we like the features that let us:

- Add a marketing message to each fax/e-mail. Currently, we are highlighting our new insertion on the Hallmark Channel.
- Compile run rate reports on a daily or monthly basis. With this report, we can judge how we perform vis-à-vis our goal of 98.5%.
- Send AEs e-mails confirming that air times were sent to their clients.

Time is at a premium in our business due to staffing, preparations for a new T&B system, and the last minute nature of some advertisers. But when we can get to it, we intend to use the daily run rate report by network to fine-tune network windows in our T&B system. That will minimize missed tones and increase revenue.

AirCheck, as we use it now, certainly saves us time by automating the daily chore of sending times to customers.

Cordially,


Laurie A. Murphy
Director of Operations

11550 Fuqua
Suite 200
Houston, TX 77034
Tel 281-922-7080
Fax 281-922-7060



Advertising Sales

August 14, 2001

To Whom It May Concern,

The service that Rick Galloway has developed is very useful. Having an easy means of getting daily prescheduled airtimes to clients has been a challenge for many ad sales operations. Mr. Galloway has come up with a simple, yet effective solution. On a per customer basis, you can choose to have daily times sent directly to the advertiser via fax or the Internet. You can choose to do this by date range or the entire order.

This has been very useful for many obvious reasons. Some to mention include, less time being wasted by both traffic operators and AE's looking for daily times from the T&B system, AE's and customers rest more assured that their schedule is running, AE's and customers are alerted when nothing is scheduled, and in some cases, more revenue can be justified.

One case in particular comes to mind. We had a local client that was selling a product from direct response. We were able to track when orders were placed by using Mr. Galloway's technology. The client refined his schedule and increased his investment with us. Other similar stories also exist.

This is a product that we have been using with success for several years. I encourage other systems to use it or get something similar.

Best regards,



Sean Cantrell

L.S.M. Time Warner Communications
11550 Fuqua #200
Houston, TX 77034
281 922 7080 #114

11550 Fuqua
Suite 200
Houston, TX 77034
Tel 281-922-7080
Fax 281-922-7060



Advertising Sales

08/14/01

To whom it may concern,

"Air Check" makes me a better sales person in several ways. First of all, it helps set me apart from the other media representatives in the market. Secondly, it helps cement new client relationships without having to call the client everyday. Another way "Air Check" makes me a better salesperson is that it allows me to spend more time selling to new clients.

"Air Check" puts me at a competitive advantage over other media representatives. All of my clients have a choice of where to place their advertising dollars. "Air Check" makes the client aware on a daily basis that he or she is advertising with me. This cements my relationship with the client and I don't even have to pick up the phone or get into my car and drive to the client. In some cases I can use "Air Check" as an opportunity to contact the client and share with him or her useful information about their airtimes. For example, "Did you know that you had a spot air in SportsCenter last night"

"Air Check" allows me to spend more of my time selling. I don't have to call my traffic operator everyday to have them print airtimes and fax them to the client manually. To me "Air Check" is a must have tool. I highly recommend "Air Check"

Sincerely,

Eric H Lunsford

Account Executive

invention include automating an "as run" report and adding to it Neilson rating results, which have not been taught or suggested before.

Secondary Evidence of Non-obviousness

Evidence of Commercial Success

A prototype of the program was beta tested at the inventor's employer from roughly 1996 through 2000. Good reports were eventually produced for a test group, reliable and timely. Advertising clients involved in the testing came to expect the service, even demand the service. (The clients were enjoying receiving times automatically since sometimes an assistant was so busy that he/she forgot to send times manually to clients. Sales personnel involved in the test were able to honor requests for the reports from all clients. E.g. in the past a secretary at Time Warner had adopted a procedure of limiting reports to a maximum of 10 advertisers, given the time and effort the manual reports required.)

As evidence of commercial success, upon instituting the beta testing of the automated prototype, advertising clients involved in the testing came to expect their reports on a regular basis. Some of these advertising clients attempted to put the transmission of the reports into their contract with Time Warner. A technical school became dependent upon the reports to the extent that they scheduled phone banks according to when their spots were scheduled to air.

After the program began to be offered commercially in 2001, the number of advertisers receiving their times per day has risen to several 100. Contracts exist which should double or triple this number in 2006. The attached letters attest to the commercial success of the invention.

Copying and Failure of Others

The original prototype program began testing at the Time Warner Southwest Region around 1996. In 1997 Time Warner changed traffic and billing systems. This required a change of the prototype program. The Time Warner local IT department at this time asserted that they did not want a program written by a non-IT person to run on their network. The manager of the IT department, thus, hired a programmer to recreate the prototype. The instant inventor fully cooperated with the programmer on the features of the program. However, the record shows in this instance that when the switchover in traffic and billing systems was implemented, the programmer had been unable to create a working report program. The instant inventor,

however, had re-written the protocol. Time Warner went back to beta testing his program. Such is evidence that producing a successful system is not simplistic.


Upon information and belief at this time at least one competitor is beta testing a program it commissioned to be written that copies the instant invention.

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Sue Z. Shaper, Applicants' Attorney at 713 550 5710 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

1/9/6
Date


Sue Z. Shaper
Attorney/Agent for Applicant(s)
Reg. No. 31663

Sue Z. Shaper
1800 West Loop South, Suite 1450
Houston, Texas 77027
Tel. 713 550 5710

(X) RELATED PROCEEDINGS APPENDIX

No Decisions.

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